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a railroad which had failed to come to any agreement with another railroad which sought to cross its tracks and which was served by the latter road with a notice, in substantial compliance with the statute, of the proposed crossing, and which, within 15 days after receiving such notice, commenced proceedings before the corporation commission to have the propriety of the crossing determined, could not contend before the commission that the notice was not a sufficient compliance with the statute.

4. Same—Question Involved.—Under Code 1904, c. 1294b, cl. 3, providing for proceedings before the State Corporation Commission for the determination of the necessity for a proposed railroad crossing and the place where and manner in which such crossing should be made, and further providing that, in case the method of crossing is determined upon, the compensation to be paid by the party desiring to make the crossing shall be ascertained according to the laws regulating the exercise of the right of eminent domain, the question of whether the crossing of the tracks of one railroad by another is a taking of property within the constitutional prohibitions against taking property without compensation and without due process of law is not involved in the proceedings before the commission.

5. Same—Propriety of Crossing—Determination.—Const. § 166 [Code 1904, p. cclxi], provides that railroads shall have the right to parallel, intersect, connect with, or cross any other railroad. Code 1904, § 1294b, cl. 62, authorizes railroads to cross other railroads in the manner prescribed by section 1294b. The latter section requires crossings to be so constructed as not to impair or obstruct the works and operations of the railroad sought to be crossed, and requires them to be supported by proper structures, etc. Held that, while a railroad ordinarily ought not to be permitted to cross the throat of the yards of another railroad at grade, there may be exceptional conditions which will render such a crossing proper, and the question whether the locality of a proposed crossing is such that the crossing should not be permitted is to be determined by the facts and circumstances of the particular case.

6. Same.—Code 1904, § 1294d, cl. 38, declaring it to be the policy of the state that the crossings of one railroad by another shall, wherever reasonably practicable, pass above or below the existing structure, does not prohibit crossings at grade, where the establishment of an overhead or underground crossing is not reasonably practicable and would involve an unreasonable expense.

STOKES' ADM'X *v.* SOUTHERN RY. CO.

Jan. 18, 1906.

[52 S. E. 855.]

1. Railroads—Accidents at Crossings—Evidence—Admissibility.—
In an action against a railway company for the death of a traveler

at a railroad crossing, evidence relating to the crossing of a wagon in front of a freight train more than 30 years before, as to the time it required a wagon and team different from that used by decedent to go over the track at the crossing, and as to the speed of another train, was inadmissible.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, § 1127.]

2. Same.—In an action against a railway company for injuries at a crossing, the question whether or not the company's right of way at or near the crossing had on it undergrowth which prevented the traveler from seeing the approaching train was material.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, § 1130.]

3. Appeal—Harmless Error—Exclusion of Evidence.—Where, in an action against a railway company for injuries at a crossing, a witness testified that he did not know the condition of the right of way at the time of the accident, and that when he went there five hours after the accident, which occurred at 5 p. m., it was dark, the refusal to permit the witness to state the condition of the right of way at the crossing five hours after the accident was not prejudicial; it being clear that the witness had stated that he did not know what the condition of the right of way was at the time.

4. Railroads—Accidents at Crossings—Contributory Negligence.—Where the proximate cause of a collision with a train at a crossing was the contributory negligence of the traveler, the question of the negligent management of the train was immaterial.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1020-1028.]

5. Same—Duty to Look and Listen.—It is the duty of a traveler on a highway to look and listen for the approach of trains before going on a railroad crossing, when his looking and listening would be necessarily effective.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1043-1051.]

6. Same—Evidence—Sufficiency.—Evidence, in an action against a railway company for the death of a traveler in a collision with a train at a crossing, examined, and held to show that decedent was guilty of contributory negligence precluding a recovery.

SATTERFIELD *v.* COMMONWEALTH.

March 8, 1906.

[52 S. E. 979.]

1. Indictment—Allegation of Previous Convictions—Sufficiency.—An indictment for petit larceny alleged that accused had been twice before sentenced for a like offense and described the warrants issued